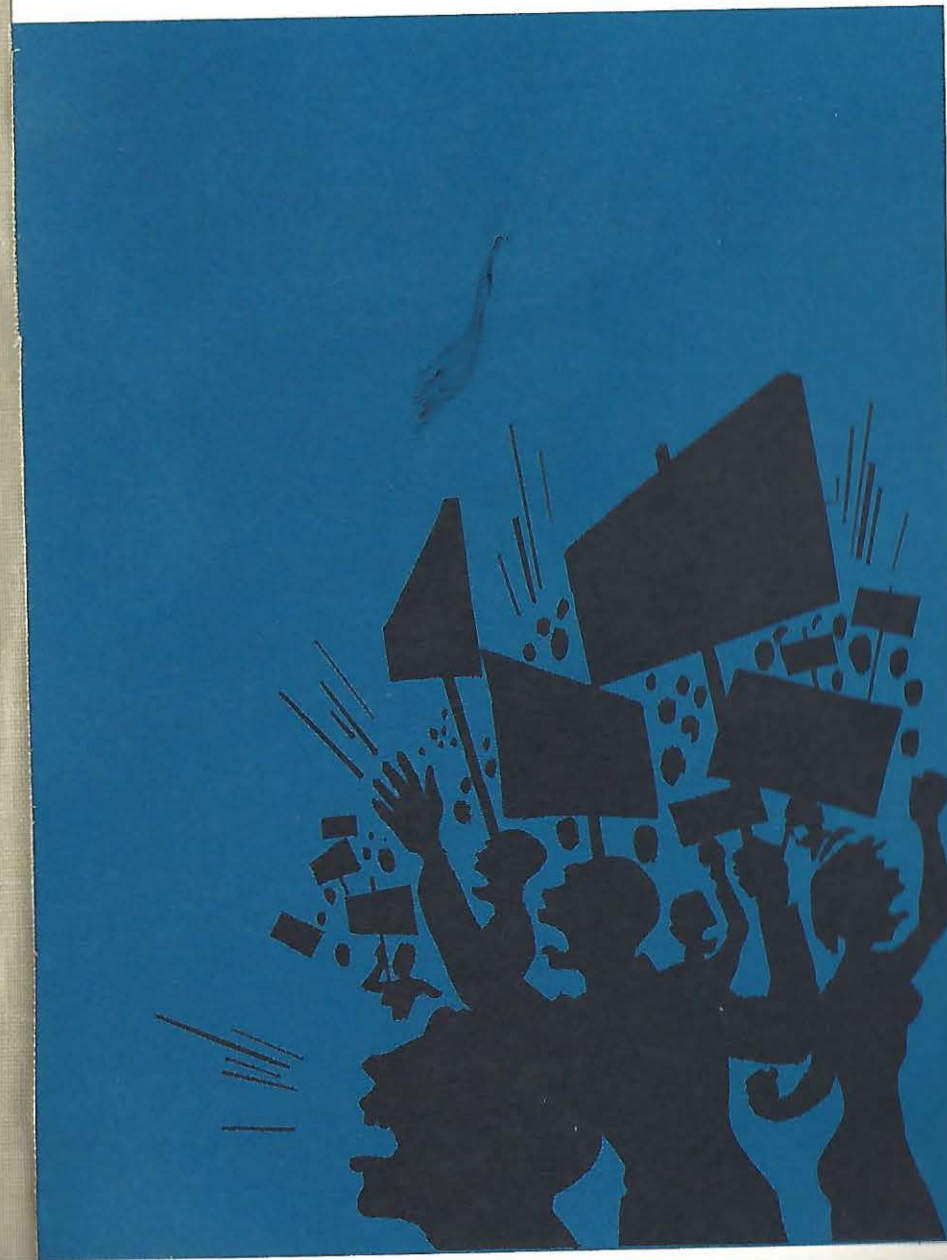


THE RIGHT NOT TO LISTEN

A commentary on Certain Rights of Free Speech and of Property,
prepared and distributed by the Virginia Commission on Constitutional Government

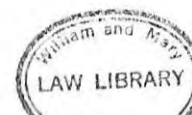


THE RIGHT NOT TO LISTEN



Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

*The First Amendment to the Constitution of the
United States of America*



FOREWORD

The word "property" always has enjoyed a revered position in books of the common law. For centuries, man has had the right to use and manage his property largely according to his own conscience. Case law interpreting "property rights" is infinite, and until recently, the law of property has been regarded as one of the areas of the law least subject to change.

But many firmly established doctrines of Anglo-American jurisprudence have come under attack of late, and many have fallen by the wayside.

The past decade has witnessed a mounting assault on property rights. Demonstrations covering a wide range, from labor disputes to ban-the-bomb marches, from racial sit-ins to organized attempts to enforce hiring practices thought desirable by a particular group, have plagued property owners incessantly over the past few years. And ordinarily, demonstrators seek to justify their actions, however violative of the rights of others, by relying on their own freedom of speech.

The Commission believes that this paper, dealing as it does with the conflict between property rights and freedom of speech, comes at an opportune time in our country's development, a time when these two cherished rights have collided head-on. We speak here for man's inalienable right to speak; and for man's equally inalienable right not to listen.

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*Richmond
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THE RIGHT NOT TO LISTEN

1. Introduction

The preposition "in" will not be found as a standard addition to verbs in dictionaries of the English language. But in the past few years, our newspapers have devised a new vocabulary to meet the needs of the times by adding "in" to almost every action verb in the dictionary, as, for example, in "sit-in," "stand-in," "kneel-in," "lie-in," "wade-in," "walk-in," "talk-in," etc. Regrettably, there has even been a "die-in."

The word "in" added to a verb means, in the language of our times, that somebody has something to say and feels that the use of his vocal facilities is inadequate to the task.¹ To emphasize his point he uses his feet instead of his mouth, or at least in addition thereto. Frequently he adds his whole anatomy to his tongue, his notion being that anything he does is justifiable as long as it can be characterized as the communication of an idea.

The whole notion of getting "in" to communicate a protest to the person who is the object of the "in" movement is that the demonstrator has a right to go wherever he wants and stay as long as he wants in order to get his idea across often enough to achieve his end. Since the "in" movement typically involves invasion of private property, it forces the subject of the movement to listen. A person who is the object of a demonstration on public grounds may retreat to the sanctuary of his private property, there to enjoy the serenity and freedom not to listen which comes from absolute dominion over his own area. A person who is the object of a demonstration on his own

1. Cf. Pollitt, "Dime Store Demonstrations: Events and Legal Problems of First Sixty Days," 1960 DUKE L. J. 315.

property has no place to hide. His last avenue of retreat is cut off. He cannot leave lest he surrender his property to whatever destructive impulses the demonstrators may possess. To stay is to subject himself to compulsory listening. He becomes a captive audience as surely as if he were chained to a theater seat, his eyes fastened by artificial rivets to a stage upon which the demonstrators enact such roles as their fancy dictates for as long as they may choose.

And yet, such a hideously distorted caricature of freedom of speech has not only been seriously asserted in some quarters, but, even more amazingly, apparently accepted.²

This article will explore the asserted proposition that freedom of speech extends to the right to go upon the property of another and there hold him a virtual captive listener, for as long as the demonstrator chooses to stay. We shall attempt to discover whether trespass to property, normally a wrong in a system of law built upon individual rights of property, business, and privacy, is transformed into an inalienable right to the detriment of others merely because the trespasser feels he will be more persuasive if he appeals to the nuisance value of his presence rather than to the reasonableness of his ideas.

2. English Common Law

While many of our notions of freedom of speech, along with the rest of our law, originated in England,³ there is no warrant for the idea that such freedom under English common law included the right to enter the private property of another to engage in a demonstration. Actions of

2. Cf. *Peterson v. City of Greenville*, 373 U.S. 244 (1963).

3. See Chafee, *FREE SPEECH IN THE UNITED STATES* (1941); Corwin, "Freedom of Speech and Press Under the First Amendment: A Resume," 30 *YALE L. J.* 40 (1920); Cf. *Near v. Minnesota*, 283 U.S. 697 (1931).

trespass to real property are as old as the common law itself,⁴ and as early as the *Six Carpenters Case*,⁵ decided at the time of King James I, Lord Coke and the other judges held that if a person abuses the right given to him to go into a store, shop, or other place, he becomes a trespasser from the time he first enters it. In addition, it was the rule at English common law that permission to enter on the business premises of another, even if paid for, was revocable at any time by the owner of the business, even in the absence of justifiable cause.⁶ Moreover, in *Regina v. Rowlands*,⁷ it was held that a conspiracy to trespass on the land of another to force the acceptance of the views of workmen in a labor dispute was an indictable criminal conspiracy at common law.

These settled common-law propositions give no comfort to the claim that the common law countenanced the right to go on the property of another to force him to listen to the views being expressed. Indeed, the strictness with which English common law upheld property rights shows that, far from a demonstration's being a defense to an action for trespass, it was more than likely to be considered an aggravation of the wrong. To the injury of unlawful entry on the property of another would be added the compulsion inherent in the demonstration. More than likely the demonstration would be accounted a separate tort, rather than a defense to the tort of trespass.

Authority for this proposition may be found in the case of *Clifford v. Brandon*.⁸ The facts were that the managers of London's famous Covent Garden Theatre had raised the price of admission beyond that which regular

theater-goers thought justifiable, and had excluded from a number of boxes members of the general public in order that the boxes might be let for the season. On the night in question, sundry members of the public came to protest these actions. They wore signs in their hats with the letters "O.P." (Old Prices) or "N.P.B." (No Private Boxes). Placards were exhibited, exhorting the audience to resist the oppression of the managers, and great noise and confusion prevailed, since some spectators stood on the benches and others sat with their backs to the stage. Various spectators sang "God Save The King" and "Rule Britannia!" while the play was progressing. Horns were blown, bells were rung, and rattles were shaken while the play was on. There was no violence offered at any time to any person in the theater, nor were any theater decorations injured in any way. The crowd, all of whom were paying spectators, used only noise and placards to express their disapproval of the rise in prices and the reservations of private boxes.

Serjeant Best, Counsel for one of the spectators, contended as follows:

"Within the walls of a public theatre, the public have a right to express their approbation or disapprobation without limit or controul. This is a right which has been immemorially exercised, which is essential to the prosperity of the drama, and which never was before questioned in a court of justice. It stands on the same principle with liberty of criticism, which the Judges have often declared to be sanctioned and protected by law. A piece may be hooted from the stage—as it may be censured and ridiculed in writing when it is published. An actor may be praised or condemned in a newspaper or pamphlet for his theatrical performances. So he may be hissed or applauded at the moment, by those who witness his efforts. Is the conduct of the managers then to be privileged from all animadversion? Upon this in a great measure

4. See, e.g., Stat. 5 Rich. II, c. 8 (1382).

5. 8 Co. Rep. 146a, 77 Eng. Rep. 695 (1610).

6. *Wood v. Leadbitter*, 13 M. & W. 838, 153 Eng. Rep. 351 (1845).

7. 17 Q. B. 671, 686, 117 Eng. Rep. 1439, 1445 (1851). See also 33 Halsbury's Laws of England (2d ed.), Trespass, pp. 3-4: "An agreement to commit a trespass may amount to a criminal conspiracy." 8. 2 Comp. 357, 170 Eng. Rep. 1183 (1809).

depend public amusement, public taste, and public morals. And how are the managers to be controuled, except by an unequivocal manifestation of public opinion? From the system of monopoly on which our theatres are governed, people cannot leave a theatre where they are ill-used, and frequent another, which is conducted with more liberality. Their only remedy is to express their disapprobation in the hearing of the manager, and to bring him to terms of submission. This accordingly is the course which has always been pursued. . . . In the present instance, the managers of Covent Garden Theatre have done everything to aggrieve and insult the public; and the opposition to their tyranny has been marked by great moderation and forbearance. They have raised the prices of admission most needlessly; and, according to the argument on the other side, had they insisted upon seven guineas for admission to the boxes, instead of seven shillings, no one had any right to complain. Formerly, any of the gentlemen of the jury might have occupied the box in the theatre which the night before was honoured by the presence of the Sovereign himself, and his august family; but the managers have now attempted to exclude the public from a considerable part of the house, and to introduce invidious distinctions where there ought to be perfect equality. Yet there has been no such violence exercised as has been formerly witnessed on much less provocation—no pulling up of benches or breaking of chandeliers—no bloodshed, or even breach of the peace. There is no pretense for denominating that the witnesses have described a riot. The people were only expressing according to ancient usage, their sense of what they disapproved. The noise was great, but not greater than is frequently heard at the condemnation of a new play. Bells and rattles may be new to the pit; but cat-calls, which are equally stunning, are as old as the English drama. Nor can the legality of the scene depend upon the exact degree of noise which is made by the audience; but whether outrage is committed, whether terror is

excited, and whether the object is laudable. If the managers remain obstinate, and set at defiance milder expostulations, they must be brought back to their duty by louder remonstrances; and there seem no just limits to necessary resistance but a breach of the peace, and a violation of property.”⁹

However, the Lord Chief Justice of the Court of Common Pleas, Sir James Mansfield, the celebrated English jurist, disagreed with this exposition of the alleged right of unlimited speech on private property, even by a paying audience. In his opinion, he declared:

“I cannot tell upon what grounds many people conceive they have a right, at a theatre, to make such a prodigious noise as to prevent others from hearing what is going forward on the stage. Theatres are not absolute necessities of life; and any person may stay away who does not approve of the manner in which they are managed. If the prices of admission are unreasonable, the evil will cure itself. People will not go, and the proprietors will be ruined, unless they lower their demands. But the proprietors of a theatre have a right to manage their property in their own way, and to fix what prices of admission they think most for their own advantage. It is said, if the prices asked are considered too high, people have a right to express their disapprobation in the tumultuous manner they have adopted. From this doctrine I must altogether dissent. If the proprietors have acted contrary to the conditions of the patent, the patent itself may be set aside by a writ of *scire facias* in the Court of Chancery. The private boxes furnish as little ground for violence. The house is the property of a certain number of individuals, to be used by them according to their own discretion. I conceive it quite impossible that anything which has been done by the managers in raising the prices, or making some of the

9. *Id.* at 364-6, 170 Eng. Rep. at 1185-6.

boxes private, can be any sort of justification in point of law for such scenes as took place on the night in question—scenes which are a disgrace to the country, and which tend to bring us back to a state of barbarism. If questions of this sort are to be decided by multitudes of people assembling tumultuously, and behaving in such a manner as to frighten decent members of society from going to the theatre, there will be an end of the law. It is time for the public to understand, that the proceedings which have lately taken place at this theatre are in a high degree illegal; and that all those who participate in them are liable to be punished severely, in proportion to their offences. These premeditated and systematic tumults have been compared to that noise which has been at all times witnessed at theatres in the immediate expression of the feelings of the audience upon a new piece, of the merits or defects of a particular performer. The cases, however, are widely different. The audience have certainly a right to express by applause or hisses the sensations which naturally present themselves at the moment; and nobody has ever hindered, or would ever question the exercise of that right. But if any body of men were to go to the theatre with the settled intention of hissing an actor, or even of damning a piece, there can be no doubt that such a deliberate and preconcerted scheme would amount to a conspiracy, and that the persons concerned in it might be brought to punishment.”¹⁰

Moreover, in this same case, it is reported that several people who had agreed to hiss a famous comedian were indicted and convicted of criminal conspiracy.¹¹

In countries still bound to England by language and tradition, this early English common-law view still prevails. Canada, as an example, has held that striking workmen have no right to trespass on their employer's land

10. *Id.* at 368-370, 170 Eng. Rep. at 1187.

11. *Accord*, *Gregory v. Duke of Brunswick*, 6 Man & G. 205, 953, 134 Eng. Rep. 866, 1178 (1844).

while picketing him,¹² that a woman vendor entering a men's section of a beer parlour may be ejected as a trespasser, even though her only object is to talk to some of the patrons inside,¹³ and that even a policeman can be forced to leave a store by the owner, subjecting himself to forcible ejection if he refuses.¹⁴

England and Canada are brethren Western democracies. The right to freedom of speech is just as dear to them as it is to Americans. Restrictions on the legitimate exercise of that right would not be tolerated by their law. Yet it is clear that their law does not countenance the notion that private property may be used to stage a demonstration at the sole whim or caprice of the demonstrators. In the eyes of English and Canadian law, private property is secure against uninvited entry. Certainly if all the benefits of freedom of speech can be obtained in England and Canada without countenancing the reduction of the owner of land to the status of a captive audience for every one who has anything to complain of against him, the United States can obtain the benefit of freedom of speech without any different rule.

3. American Authority

The common-law right to be free from unauthorized intrusions into one's property, protected by trespass remedies, is too well settled to be called into doubt any more.¹⁵ Such right extends to commercial premises as well as residential premises, and the owner of a commercial establishment has as much right to require a person who

12. *Noranda Mines Ltd. v. United Steel Workers* (1954) *Revue Legale* 65, (1954) *Quebec Sup. Ct.* 27, 109 *Can. Cri. Cas.* 289.

13. *Brien v. Astoria Hotels Ltd.* 54 *Brit. Col. R.* 3, (1939) 1 *W.W.R.* 641.

14. *Rex. v. Ryan*, 24 *C.R.* 214, 18 *W.W.R.* 684 (*Brit. Col. Ct. App.* 1956).

15. Note, "Legal Aspects of the Sit-In Movement," 5 *RACE REL. L. REP.* 935 (1960); *cf.* *Briggs v. State*, 367 *S.W. 2d* 750 (*Ark.* 1963); *State v. Avent*, 253 *N.C.* 580, 118 *S.E. 2d* 47 (1961).

has entered it lawfully to leave as he has to bar the person in the first place.¹⁶

The right to be free from uninvited intrusion extends to cases of those who go on another's property to inform the owner of his views on any subject. It is for the owner of the property, and for him alone, to decide who shall enter and who shall be banned; not even the community can usurp that prerogative for him.¹⁷ It is therefore all the more obvious that an interested demonstrator cannot oust the property owner of his sole and exclusive right to decide whether a demonstration shall be held on his property. Accordingly, in *Commonwealth v. Richardson*,¹⁸ the Supreme Judicial Court of Massachusetts held that a statute forbidding trespass by one seeking to inform the occupant of land against his will of the trespasser's views was not a violation of freedom of speech and was constitutional. Likewise, in *State v. Martin*,¹⁹ the court declared:

"These guarantees of . . . freedom of speech and of the press, do not sanction trespass in the name of freedom. We must remember that personal liberty ends where the rights of others begin. The constitutional inhibition against the making of a law . . . abridging the freedom of speech or of the press, does not conflict with the law which forbids a person to trespass upon the property of another."²⁰

And in *Breard v. Alexandria*,²¹ the United States Supreme Court had this to say:

"The First and the Fourteenth Amendments have never been treated as absolute. Freedom of speech or press does not mean that one can talk or distribute

16. Annot., "Rights to Eject Customer from Store," 9 A.L.R. 379, 33 A.L.R. 421.

17. *Martin v. Struthers*, 319 U.S. 141 (1943).

21. 341 U.S. 622 (1951).

18. 313 Mass. 632, 48 N.E. 2d 678 (1943).

19. 199 La. 39, 5 So. 2d 377 (1941).

20. *Id.* at 380.

where, when and how one chooses. Rights other than those of the advocates are involved. By adjustment of rights, we can have both full liberty of expression and an orderly life."²²

In this connection, *Blunt v. Mott*²³ is an old but instructive case. Here, plaintiffs rented a room and called a meeting of all citizens who were opposed to legislative grants of railroad franchises. Defendants arrived en masse at the meeting, occupied the room, elected a meeting chairman, and then passed resolutions entirely opposed to the objects and purposes for which the meeting was called. The New York City Court of Common Pleas held that defendants had no right to express themselves in this way in a room rented by plaintiffs for an opposing purpose, and that they were liable in damages to plaintiffs.

More modern authority from a different field supports the same position, that a person has no right to demonstrate on the property of another without the consent of the owner of the property. In view of the fact that the right to engage in demonstrations in support of social, political, or economic objectives generally was first recognized by the United States Supreme Court by analogy to the right to engage in labor demonstrations,²⁴ it is instructive to note how the courts have dealt with the asserted claim that a labor union could demonstrate for its objects on the property of the employer.

Authority is unanimous that strikers have no right to picket or trespass on, or otherwise demonstrate on the property of an employer.²⁵ Since a sit-in or sit-down strike is a demonstration on private property of an employer, it,

22. *Id.* at 642.

23. 10 Abb. Prac. 222 (N.Y. 1860).

24. *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552 (1938).

25. *United Mine Workers v. Red Jacket Consol. Coal & Coke Co.*, 18 F. 2d 839 (4th Cir. 1927), cert. den., 275 U.S. 536; *Bloomington Mills Inc. v. Local Union No. 667*, 78 Pa. D. & C. 549, 41 Luz. L. Reg. 53 (1950).

too, is illegal.²⁶ Even a one-man sit-down and sit-in strike was held to be illegal in *Holland v. Minnehoma Oil & Gas Co.*²⁷ on the ground that "clearly enough the defendant forcibly took or retained possession of his employer's property, without the slightest legal right."

The United States Supreme Court is in accord with this view. Not only has it held that labor demonstrations are lawful and constitutionally protected only if they are peaceful and do not disturb any of the employer's rights,²⁸ but in *National Labor Relations Board v. Fansteel Metallurgical Corp.*²⁹ the Court specifically condemned sit-in and sit-down strikes. Chief Justice Hughes declared for the United States Supreme Court:

"Nor is it questioned that the seizure and retention of respondent's property were unlawful. It was a highhanded proceeding without shadow of legal right. It became the subject of denunciation by the State court under the State law, resulting in fines and jail sentences for defiance of the court's order to vacate and in a final decree for respondent as the complainant in the injunction suit."³⁰

Further on the Chief Justice continued:

"The employees had the right to strike but they had no license to commit acts of violence or to seize their employer's plant The seizure and holding of the buildings was itself a wrong apart from any acts of sabotage. But in its legal aspect the ousting of the owner from lawful possession is not essentially different from an assault upon the officers of an em-

26. *Apex Hosiery Co. v. Leader*, 90 F. 2d 155 (3rd Cir. 1937); *Fansteel Metallurgical Corp. v. Lodge* 66, 295 Ill. App. 323, 14 N.E. 2d 991 (1938). See also *Ohio Leather Co. v. De Chart*, 1 Ohio Suppl. 207.

27. 184 Okl. 640. 89 P. 2d 764 (1939).

28. *Milkwagon Drivers' Union v. Meadowmoor Dairies*, 312 U.S. 287 (1941).

29. 306 U.S. 240 (1939).

30. *Id.* at 252.

ploying company, or the seizure and conversion of its goods, or the despoiling of its property or other unlawful acts in order to force compliance with demands. To justify such conduct because of the existence of a labor dispute or of an unfair labor practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations of society."³¹

And in *Carnegie-Illinois Steel Corp. v. United Steelworkers of America*,³² Mr. Chief Justice Maxey, speaking for the Supreme Court of Pennsylvania declared:

"Such a lawless seizure of property no government worthy of the name will tolerate or condone. . . . When any individual or organization under whatsoever name attempts to use force to gain his or its ends they are attempting to usurp governmental functions. This attempt unless promptly and effectively restrained by legally constituted authority leads to lawlessness, disorder and anarchy, which is the very negation of all government. The law cannot temporize with lawlessness. *The first duty of government is to govern*, that is, to maintain law and order at all hazards and regardless of expense; only by doing this does it fulfill its legitimate function, which is the protection of life, liberty, and property.

"The holding or seizure of even one gateway to the plant entitled the plaintiff to the protection of a court of equity just as fully as would the seizure of the entire plant. When a 'picket line' becomes a picket fence it is time for government to act. Collective coercion is not a legitimate child of collective bargaining. The forcible seizure of an employer's property is the very essence of communism."³³

31. *Id.* at 253.

32. 353 Pa. 420, 45 A. 2d 857 (1946).

33. *Id.* at 861.

It can thus be seen that nothing in American law lends any shred of support to the claim that one person is legitimately exercising his freedom of speech by making a demonstration, however non-violent, on the property of another. Such a demonstration is not mere communication of views, but, under the authorities, it constitutes a *pro tanto* seizure of the property, and hence involves the use of force, even though not directed at the owner's person. Unless the owner is willing to abandon his property to the demonstrators, he becomes a captive audience for them. Such a demonstration is therefore violence parading in the deceptive clothing of non-violence. It is but a more subtle form of unlawful force to compel the property owner to listen. The American decisions condemn it unequivocally. As one court concluded:

"Appellants' constitutional rights of freedom of assembly, speech, and worship, do not include the privilege of exercising such rights on appellee's undedicated private property, without the consent and against the will of appellee. . . . It would seem to follow—as night the day—that any constitutional rights of the appellant to freedom of assembly, speech, and worship, have not been in any wise abridged by the trial court's injunction against them; in other words, they simply could not exercise those claimed abstract rights on the appellee's private property without its permission, and over its objection, since in the attempt to do so they had no higher standing than any other trespassers."³⁴

4. Indian Authority

Some of those who can find no English or American authority to support the right to make demonstrations on the land of others have turned to Indian precedent.³⁵

34. *Good v. Dow Chemical Co.*, 247 S. W. 2d 608, 610 (Tex. Civ. App. 1952), *app. dism.* 344 U.S. 805 (1952).

35. MacGuigan, "Civil Disobedience and Natural Law," 52 KENTUCKY L. J. 346 (1946).

They would seek to import methods used by Mahatma Gandhi in obtaining India's independence from Great Britain. Thus, they would analogize such demonstrations to the non-violent, or passive resistance, offered by Gandhi and his Congress Party followers to British rule during the 1930's. This attempt to import Indian methods by analogy raises the rather interesting question as to what present day Indian law is and how it would view a non-violent demonstration on the land of another. It is obvious that if Indian law would not condone such a demonstration, the attempt to justify such a demonstration by resort to Gandhi's ideas must fail.

Section 441 of the Indian Penal Code of 1860, which is still in force, provides as follows:

"Whoever enters into or upon property in the possession of another with intent . . . to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there, with intent thereby to intimidate, insult, or annoy any such person . . . is said to commit 'criminal trespass.'"

Moreover, Section 447 of the Indian Penal Code provides:

"Whoever commits criminal trespass, shall be punished with imprisonment . . . for a term which may extend to three months, or with a fine which may extend to Rs. 500, or with both."

The question of whether persons who demonstrate on the property of another intend to intimidate, insult, or annoy the owner is, of course, a question of fact. However, such a finding, within the meaning of Section 441 of the Indian Penal Code, would seem to be quite likely in the case of those engaging in a "sit-in" or kindred activity. Such a demonstration is usually aimed at getting the proprietor of the premises to comply with the demands of

the demonstrators. The fact that the demonstration is necessary at all shows that the proprietor is unwilling to comply, and that the demonstration is necessary to enforce compliance. Thus, such a demonstration would seem to fall squarely within a decision of the Patna High Court that an entry for the purpose of getting a person to take action against his will constitutes an intent to intimidate.³⁶ The fact that the demonstrators might claim a right of entry would, of course, make no difference under settled Indian law. In *Varied v. Lakshmiamma*,³⁷ Mr. Chief Justice Vaidyanath Ayyar of the Chief Court of Cochin, declared:

"It may be that the accused entered into possession in assertion of a leasehold right obtained from some of the owners of the properties. But the fact that they did so while both the complainant and her daughter were present and after frightening them away would clearly show that their entrance was with intent to intimidate or annoy the complainant and her daughter."

In addition, it is entirely probable that an intent to annoy the owner of the property could be found when a group demonstrates on his land. The Indian cases on what constitutes "annoyance" within the meaning of Section 441 of the Indian Penal Code have been summarized by two prominent textwriters as follows:

"The word 'annoyance' must be taken to mean annoyance that would generally and reasonably affect an ordinary person, not what would specially and exclusively annoy a particular individual. Where a person claiming a title to property, whether his title be good or bad, enters without any legal justification

36. *Bird v. King-Emperor*, ILR (1933) 13 Pat. 268, AIR 1934 Pat. 156.

37. 21 COCHIN L. REP. 196 (1930).

upon property in the established possession of another, he must be inferred to have had an intent to annoy the person in possession, even though he had no primary desire to annoy, and his only object was to obtain possession for himself. Where the accused enclosed and cultivated a portion of a burial-ground, it was held that he had committed this offense as his act was calculated to cause annoyance to persons using the burial-ground. When the accused entered into the complainant's house with intent to have illicit intercourse with his widowed sister, it was held that he was guilty of this offense as the illicit intercourse was bound to cause great annoyance to the complainant."³⁸

In addition to annoying the owner, it seems entirely probable that the demonstrators on his property may intend to annoy others doing business with him there. If so, they are likewise violating the statute as to such other people. In *Sirkar v. Kori*,³⁹ Justice Narayana Menow of the Chief Court of Cochin held:

"From a common sense point of view also, it would be hard if the law does not extend its protection to persons of the position of prosecution 4th witness against insult or annoyance by others trespassing into the property, of which they are having their limited legitimate enjoyment, even though they cannot be regarded as more than licensees."⁴⁰

When a group of demonstrators engage in a "sit-in" or other similar demonstration on a man's land without permission, it is virtually certain that he, and probably his customers or guests, will be annoyed. Indeed, it would be

38. *Ranchhoddas & Thakore*, THE INDIAN PENAL CODE 356-357 (19th ed., Bombay 1948). See also *Preman v. Emperor*, AIR 1930 Lah. 666, 1930 Cri. Cas. 810, 125 Ind. Cas. 612, 31 Cri. L. 878, ILR 11 Lah. 238.

39. 13 COCHIN L. REP. 100 (1921).

40. *Id.* at 110-1.

difficult to visualize a situation where he is not annoyed. In addition, it is likely that the group hopes to intimidate him into changing his course of conduct. Thus, an intent to annoy or intimidate may reasonably be inferred. Thus, such action would constitute criminal trespass under Indian law.

Nor would such demonstrations be considered by the Indian courts as an exercise of freedom of speech. While they consider freedom of speech and assembly as a fundamental right,⁴¹ such a right is not unlimited.

The Indian courts consider freedom of speech limited by the rule that it may not be used to interfere with the right of another to carry on his business,⁴² and, since Indian independence, are no longer prepared to accept the technique of passive resistance as a legitimate method of communication of viewpoint.⁴³

In a case raising the issue of whether passive or non-violent resistance could be considered as a peaceful communication of ideas, the court stated:

"A peaceful picketing cannot include causing physical obstruction to loyal workers or to the business of the management."⁴⁴

Indeed, in a case as late as 1963, *Bengal Bhatdee Coal Co. v. Ram Prahesh Singh*,⁴⁵ Justice Shri K. N. Wanchoo, speaking for the Supreme Court of India, declared:

41. *Romesh Thopper v. State of Madras*, (1950) S.C.R. 594; *Vithoba Rao v. Government of Mysore*, 11 Mysore L. J. 364 (1933). A similar view is taken by other nations closely linked with India. See *Hayleys, Ltd. v. Crossette—Thambiam*, 63 N.L.R. 248 (Ceylon 1961), and *Chittagong Eng. & Elec. Supply Co. Ltd. v. Chittagong Eng. & Elec. Supply Co. Employees' Union*, *Shafti, Analysis & Text of Tribunals Awards* 103 (East Bengal Ind. Tri. 1957).

42. *State v. Mahajani* (1952) 7 Dom L. R. 32.

43. *In re Vengan* ILR (1952) Mad. 553, AIR 1952 Mad. 95.

44. *Bombay Electric Supply & Transit Undertaking v. Mushaffe Ahmed Vhalil Abbasi Shaikh*, 1961 Bombay Industrial Ct. Rep. 845 (Nov. 1961).

45. 1963 LABOUR LAW CASES 440 (Pak.).

"It is not in dispute that a strike was going on during those days when . . . the misconduct took place and the misconduct was that these thirteen workmen physically obstructed other workmen who were willing to work by sitting down between the tramlines. This was in our opinion, serious misconduct on the part of the thirteen workmen. . . ."⁴⁶

Accordingly, those engaging in "sit-in" demonstrations cannot claim support from Indian law for their activities.

5. Conclusion

The idea that anyone may be forced to listen to anyone else is not only devoid of constitutional sanction,⁴⁷ but would naturally evoke spontaneous outrage on the part of all except those so emotionally committed to whatever cause the demonstrators profess that they are blinded to the rights of others. The right not to listen, and to be free of any coercion or inconvenience designed to make one listen, is a claim of the highest priority in a society which purports to be free. The basis for this claim was articulated by one commentator as follows:

"What is perfectly clear is that the claim to freedom from unwanted speech rests on grounds of high policy and on convictions of human dignity closely similar to if not identical with those classically brought forward in support of freedom of speech in the usual sense. Forced listening destroys and denies, practically and symbolically, that unfettered interplay and competition among ideas which is the assumed ambient of the communication freedoms. It contradicts, moreover, what some would regard as a deeper though not often spoken ground for letting people say freely what they choose to say—respect, namely,

46. *Id.* at 444.

47. *Kovacs v. Cooper*, 336 U.S. 77 (1949).

for each man as a person, in his uniquely human and finally mysterious function as user of language."⁴⁸

Alongside of the right not to listen, the right not to serve as an unwilling host to all and sundry who would come along to use one's property as a forum for his views is equally basic to Anglo-American traditions.

In the recent case of *Bell v. Maryland*,⁴⁹ Mr. Justice Black, dissenting, first noted:

"We do not doubt that one purpose of these 'sit-ins' was to express a vigorous protest. . . . But it is wholly clear that the Maryland statute here is directed not against what petitioners said but against what they did—remaining on the premises of another after having been warned to leave, conduct which States have traditionally prohibited in this country. And none of our prior cases has held that a person's right to freedom of expression carries with it a right to force a private property owner to furnish his property as a platform to criticize the property owner's use of that property."

He further declared:

"Their argument comes down to this: that since petitioners did not shout, obstruct Hooper's business (which the record refutes), make speeches, or display picket signs, handbills, or other means of communication, they had a perfect constitutional right to assemble and remain in the restaurant, over the owner's continuing objections, for the purpose of expressing themselves by language and 'demonstrations'. . . . The Court's prior cases do not support such a privilege growing out of the constitutional rights of speech and assembly. Unquestionably peti-

48. Black, "He Cannot Choose But Hear: The Plight of the Captive Auditor," 53 COLUMBIA L. REV. 960, 967 (1953).

49. 84 Sup. Ct. 1814 (1964).

tioners had a constitutional right to express these views wherever they had an unquestioned legal right to be. . . . But there is the rub in this case. The contention that petitioners had a constitutional right to enter or to stay on Hooper's premises against his will because, if there, they would have had a constitutional right to express their desire to have restaurant service over Hooper's protest, is a boot-strap argument. The right to freedom of expression is a right to express views—not a right to force other people to supply a platform or a pulpit."

And he finally concluded:

"A great purpose of freedom of speech and press is to provide a forum for settlement of acrimonious disputes peaceably; without resort to intimidation, force, or violence. The experience of ages points to the inexorable fact that people are frequently stirred to violence when property which the law recognizes as theirs is forcibly invaded or occupied by others. Trespass laws are born of this experience. They have been, and doubtless still are, important features of any government dedicated, as this country is, to a rule of law. Whatever power it may allow the States or grant to the Congress to regulate the use of private property, the Constitution does not confer upon any group the right to substitute rule by force for rule by law. Force leads to violence, violence to mob conflicts, and these to rule by the strongest groups with control of the most deadly weapons. Our Constitution, noble work of wise men, was designed—all of it—to chart a quite different course: to 'establish Justice, insure domestic Tranquility . . . and secure the Blessings of Liberty to ourselves and our Posterity.' At times the rule of law seems too slow to some for the settlement of their grievances. But it is the plan our Nation has chosen to preserve both 'Liberty' and equality for all. On that plan we have put our trust and staked our future."



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"Those First Amendment rights incorporated into the Fourteenth Amendment, however, are not a license to trample upon the rights of others. They must be exercised responsibly and without depriving others of their rights, the enjoyment of which are equally as precious."

Baines, et al. v. City of Danville, Virginia; Fourth Circuit Court of Appeals, August 10, 1964.



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